IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

NO. 72-399

JOHN L. WILLIAMS,
District Attorney General,

Petitioner,

v.

LILLY MAE ONIE LEE WHITELAW HILLARD,
Respondent.

PETITIONER'S REPLY

MAY IT PLEASE THE COURT:

Respondent in his Brief in Opposition at page 9 has stated the issue to be "the obligation of the law on the district attorney general to reveal and conversantly [sic] not to suppress material exculpatory evidence ..." If this be the issue (rather than as stated by Petitioner —the knowing use of perjured testimony) this is all the more reason certiorari should be granted.

There is no exercise of the district attorney's discretion in knowingly presenting perjured testimony. By definition, he has acted improperly. It *is* within the discretion of the district attorney general what evidence he reveals to the defendant.

No American court has held a district attorney must stand trial for money damages for allegedly failing to reveal material exculpatory evidence. Even so, this is beside the point. Two salient points are obscured by *assuming* the district attorney withheld exculpatory evidence.

REASONS WHY CERTIORARI SHOULD BE GRANTED

1. Making the district attorney stand trial is the only way we can know if he actually withheld exculpatory evidence. Public policy dictates that prosecutors not have to live in fear of every Tom, Dick and Harry whom they have convicted filing pleadings which will force them to employ attorneys* to defend charges against them.

2. Federal courts are courts of limited jurisdiction having only such powers as have been granted by Congress. Congress in passing the Civil Rights Act never intended for judges *or* prosecutors to stand trial for money damages. The Sixth Circuit cannot bestow upon the district court jurisdiction it doesn't have.

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* The district attorney here has been represented so far by the Office of the Tennessee Attorney General without cost to him. If this Court denies certiorari, the Attorney General has ruled that Mr. Williams will have to employ his own counsel and in the event he is successful, seek reimbursement by a special appropriation by the Tennessee Legislature. The Tennessee Attorney General has traditionally defended persons such as prison wardens, judges, etc. through the motion stages but has required defendants in civil rights actions to hire their own counsel when the case cannot be dismissed on the pleadings.

CONCLUSION

This Honorable Court should grant certiorari, reverse the Court of Appeals for the Sixth Circuit and reinstate the order of the district court dismissing the defendant.

Respectfully submitted,

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